

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL MULHALL,

Plaintiff,

v.

AUTO-OWNERS INSURANCE
COMPANY,

Defendant.

8:24CV251

ORDER

On June 6, 2024, plaintiff Michael Mulhall (“Mulhall”) filed this lawsuit (Filing No. 1) in state court against defendant Auto-Owners Insurance Company (“Auto-Owners”), claiming it owes him further payments to cover the cost of hail damage to his property. Auto-Owners has since removed Mulhall’s suit to this Court on the basis of diversity between the parties. *See* 28 U.S.C. §§ 1332(a)(1), 1441. It also moved to dismiss Mulhall’s bad-faith claim against it pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) (Filing No. 7).

Mulhall has now filed a Notice of Partial Voluntary Dismissal (Filing No. 11) of that bad-faith claim. He states he elects to voluntarily dismiss only that claim “to narrow the issues to be presented at trial.” But under Rule 41(a), a plaintiff can only effectuate the dismissal of an entire “action . . . by filing a notice of dismissal.” *See also Rosell v. VMSB, LLC*, 67 F.4th 1141, 1144 (11th Cir. 2023) (stating “because the parties attempted to dismiss one count rather than the entire action, no part of Rule 41(a) authorized the dismissal”); *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (same); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2362 (4th ed. June 2024 Update) (“It seems well established that when multiple claims are filed against a particular defendant, Rule 41(a) is applicable only to the voluntary dismissal of all claims against the defendant.”). To properly eliminate that claim, therefore, Mulhall should amend his

complaint. *See* Fed. R. Civ. P. 15(a)(1)(B) (allowing a party to “amend its pleading once as a matter of course . . . 21 days after service of a motion under Rule 12(b)).

IT IS SO ORDERED.

Dated this 31st day of July 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge